



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,343	08/09/2001	Gerd Jakob Ernst Scheller	853663.408	4400
38106 7590 04/07/2009 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVENUE, SUITE 5400 SEATTLE, WA 98104-7092				
EXAMINER ELAHEE, MD S				
ART UNIT 2614		PAPER NUMBER		
MAIL DATE 04/07/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 09/925,343	Applicant(s) SCHELLER ET AL.
Examiner MD S. ELAHEE	Art Unit 2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1 and 3-7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/MD S ELAHEE/
Primary Examiner, Art Unit 2614

Continuation of 11, does NOT place the application in condition for allowance because: Regarding claims 1, 6 and 7, the applicant argues on page 4 that the cited portions of the Nakamura reference do not teach that lid 3 in any way functions as a lever element being arranged to bend any material. This argument is not relevant. It is because, examiner did not rely upon Nakamura to teach this limitation. Examiner depends upon Donnelly to teach this limitation.

The applicant further argues on page 4 that Donnelly's belt clip 60 is not part of the housing of a mobile device. In other word, Donnelly's lever element is not an integral part of the housing of a mobile device. Examiner agrees that Donnelly's lever element is not an integral part of the housing of a mobile device. However, examiner did not rely upon Donnelly to teach that Donnelly's lever element is an integral part of the housing of a mobile device. Examiner depends upon Donnelly to teach the belt clip [i.e., lever element] being arranged to bend a material of lower hardness, external to the personal communications device [i.e., portable electronic apparatus] (col.3, lines 26-31), by way of a leverage effect, wherein the material of lower hardness includes a bottle cap (fig.1-10; col.5, lines 12-18, 44-67, col.6, lines 1-22, 58-67).

The applicant further argues on pages 4-5 that the Office Action fails to cite to any reference that teaches a housing part that is constructed as a lever element being arranged to bend a bottle cap. Examiner respectfully disagrees with this argument. Donnelly teaches this limitation (see col.5, lines 12-18, 44-67, col.6, lines 1-22, 58-67).

Regarding claim 5, the applicant argues on page 5 that The Examiner appears to be taking Official Notice that Nakamura's lid 3 "can be constructed as an angled metal plate. Examiner respectfully disagrees with this argument. It is because, in fig.1; col.2, lines 54-65, Nakamura teaches that lid 3 can be constructed as an angled metal plate. In other word, lid 3 of Nakamura can be constructed similar to an angled plate. Furthermore, since the lid is made at an angled at different corners, it can cover the battery (see fig.1).

Therefore, the rejection of the claim in view of Nakamura and Donnelly will remain..